

**REMARKS**

Entry of the foregoing amendment is respectfully requested.

**Summary of Amendments**

Upon entry of the foregoing amendments, claim 112 is amended, whereby claims 112-131 will continue to be pending, with claim 112 being the only independent claim.

Support for amended claim 112 can be found throughout the present specification.

Applicants emphasize that the amendment to claim 112 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute claim 112 in its original, unamended form in one or more continuation and/or divisional applications.

**Summary of Office Action**

As an initial matter, Applicants note with appreciation that the Examiner has considered the Supplemental Information Disclosure Statement filed June 3, 2009 by returning a signed copy of the Form PTO-1449 submitted therein.

Applicants further note with appreciation that claims 113 and 116 are indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 114, 117 and 124-131 are withdrawn from consideration.

Claims 112, 115, 120 and 123 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Heydom , Expert Opinion on Investigational Drugs (2000), 9: 841-858 (hereafter

“HEYDOM”) in view of Oettel et al., US 2002/0065260 (hereafter “OETTEL”).

Claim 118 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HEYDOM in view of OETTEL and further in view of Ding et al., U.S. Patent No. 6,120,536 (hereafter “DING”).

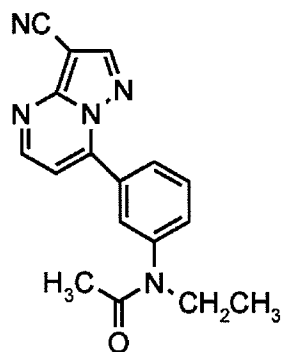
Claims 119 and 121 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HEYDOM in view of OETTEL and further in view of Papathanassiu, U.S. Patent No. 6,528,489 (hereafter “PAPATHANASSIU”).

Claim 122 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HEYDOM in view of OETTEL and further in view of Lintner, U.S. Patent No. 6,620,419 (hereafter “LINTNER”).

### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested, in view of the foregoing amendments and the following remarks.

Applicants note that all of the claims under consideration with the exception of claims 113 and 116 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HEYDOM in view of OETTEL, optionally in combination with DING, PAPATHANASSIU or LINTNER. In particular, the rejection relies on the formula of Zapelon shown in Fig. 1 at page 842, i.e.,



and alleges that HEYDOM teaches a pharmaceutical composition comprising Zapelon. The rejection concedes that HEYDOM does not teach a pharmaceutically or cosmetically acceptable adjuvant but asserts that OETTEL teaches that adjuvants are common use in the pharmaceutical industry, wherefore it would allegedly have been “*prima facie* obvious for the skilled artisan to have a pharmaceutically acceptable carrier as taught by [HEYDOM] and further add an adjuvant as taught by OETTEL”.

In response, Applicants submit that present independent claim 112 no longer encompasses Zapelon in that the latter compound comprises N atoms in both partial rings (i.e., both the five-membered ring and the six-membered ring) whereas according to claim 112 submitted herewith the partial rings in the general formula (I) may only contain heteroatoms (in addition to X and/or Z) which are selected from O and S. HEYDOM clearly does not render it obvious to replace the N atoms in Zapelon by O and/or S atoms and it is not seen that any of OETTEL, DING, PAPATHANASSIU or LINTNER cures this deficiency of HEYDOM.

Applicants submit that for at least the foregoing reasons, HEYDOM in view of OETTEL, DING, PAPATHANASSIU or LINTNER fails to render obvious the subject matter of claim 112 submitted herewith (and the claims dependent therefrom), wherefore withdrawal of all of the

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present rejections under 35 U.S.C. § 103(a) and rejoinder of all withdrawn claims is respectfully requested.

### **CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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/Heribert F. Muensterer/  
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